IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4801 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

THAKRE RAJENDRA DWARKANATH

Versus

A.E.C.LTD.

Appearance:

1. Special Civil Application No. 4801 of 2004

MR MUKUL SINHA for Petitioner No. 1

MR BG SHUKLA WITH SI NANAVATI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 19/04/2004

ORAL JUDGEMENT

Rule. Mr. B.G. Shukla with Mr. Nanavati waives service of notice of Rule. With the consent of

the parties, the matter is taken up for the final hearing today.

2. The present petition is preferred by the petitioner challenging the legality and validity of the order dated 5.4.2004 passed by the Industrial Court (which is wrongly typed as Industrial Tribunal) in Review Application No. 7 of 2000, whereby, the order passed in Revision No. 36 of 2000 is set aside and the direction is given to consider the proceedings of B.I.R. Application No. 84 of 2000 under Section 80(C) of Bombay Industrial Relations Act (hereinafter referred as "BIR Act" and to decide the Preliminary issues.

3. Heard Mr. Sinha, learned advocate for the petitioner and Mr. Nanavati for the respondent. It appears that initially the proceedings are initiated under the BIR Act being Application No. 84 of 2000 and in the said proceedings, the application Ex. 2 was submitted by the petitioner prohibiting the respondent from making any change in the service condition including the reduction of the strength of the Meter Readers. The Labour Court passed the order on 8.6.2000, whereby, the interim injunctions was granted in part. It was one of the contentions of the respondent that until the order under Section 80(C) of the BIR Act is passed, the present application is not maintainable. It is also the case of the respondent that other contentions regarding maintainability of the application before the Labour Court were also raised.

4. The matter was carried in Revision before the Industrial Court by the respondent and order dated 6.11.2000 came to be passed, whereby, the Industrial Court has partly allowed the Revision and certain reliefs were granted. The petitioner Union has challenged the said order of the Industrial Court in Special Civil Application No. 12083 of 2000. This court (Coram : Ravi R. Tripathi, J.) has as per order dated 17.8.2001 admitted the petition and interim relief granted earlier is vacated.

5. It is the case of the respondent that instead of challenging the order of the Industrial Court in Revision, the respondent preferred Review Application under Section 95 of the B.I.R. Act and ultimately, the Review Application is heard by the Industrial Court and order dated 5.4.2004 is passed by the Industrial Court, which is under challenge in this petition.

6. Upon hearing the learned counsel for the parties,

it appears that there is no dispute on the pendency of writ petition before this Court being Special Civil Application No. 12083 of 2000 and the order dated 17.8.2001. It was submitted by Mr. Sinha, learned advocate for the petitioner, that when the petition is at large pending before this court, the Tribunal ought not to have exercised the powers of review and ought not to have passed an order, which resulted into the petition becoming infructuous, which is pending before this court. On the other hand, Mr. Nanavati, learned advocate appearing for the respondent, submitted that as Special Civil Application No. 12083 of 2000 was preferred by the petitioner qua certain reliefs ordered by the Industrial Court in the Revision and respondent, instead of challenging the order in Revision, has preferred Review Application for the other aspects, which was not the subject matter of the petition and therefore, he submitted that the Industrial Court could have passed the order and could have entertained the application. Mr. Nanavati has alternatively submitted that in case if this court is of the view that Review powers could not have been exercised or if any observation or order passed in review comes in way of the pendency of the writ petition being Special Civil Application No. 12083 of 2000, then in that case, the order passed by the Industrial Court may be set aside. However, he submitted that liberty may be reserved to the respondent to move the appropriate application before the Labour Court for decision of the preliminary issue including the question of passing order under Section 80(C) of the B.I.R. Act. Mr. Nanavati has also submitted that one of the contentions raised in the Review Application was that there is enormous increase in the number of customers of the respondent and as a result thereof, the strength of the existing Meter Readers are not sufficient to meet with the requirement and since the order has been passed not to increase or to decrease the strength of the Meter Readers, the respondent is unable to make new appointments. Mr. Nanavati has also submitted that pending the proceeding before the Labour Court, Industrial Court and upto this Court and till today, number of Meter Readers by afflux of time had retired from service and as a consequence thereof, existing Meter Readers are not in a position to cope-up with the requirement of customers and therefore, also, the respondent should be put to the liberty of engaging new persons as Meter Readers by suitable direction and he submitted that such were also the contentions raised in the Review Application. Mr. Nanavati fairly submitted that there is no express prayer for permitting the Company to make new appointment on such ground, though the order was sought to be reviewed

on such ground.

7. It appears that when Special Civil Application No. 12083 of 2000 was very much pending before this court, which is against the order in Revision passed by the Industrial Court, the Industrial Court could not have exercised the power of review. The order passed in Revision, which is reviewed, can be said to be the composite order and the order passed in Revision, by Industrial Court, cannot be segregated so as to exercise the powers of review, which consequently results into frustrating or prejudicing the rights of either party in the proceeding of writ petition being Special Civil Application No. 12083 of 2000 pending before this Court. The power of any authority under Review cannot be equated with the powers as that of the Appellate Court or Higher Forum. Even if wide powers are read with the Reviewing Authority, it must be for the purpose of correcting or modifying the order on the basis of the principles, which are analogous to the provisions of the Code of Civil Procedure. In the present case, as stated above, for exercise of the powers under Review, the provisions of Code of Civil Procedure would be applicable. Even if they are not applicable, in my view, the position would not be substantially different. The power of review, cannot be expanded to the extent of challenging the vary order, which is sought to be reviewed against. If such power of review is read, it would result into upsetting the finality of the judicial decision by the same authority. The authority, which has passed the order, cannot be allowed to review its own order unless the basic requirement for exercising powers are satisfied on the basis of either provisions of Code of Civil Procedure for review or the principles analogous to the provisions of Code of Civil Procedure for review.

8. It therefore appears that Tribunal could not have exercised the powers of review, more particularly when it was fully aware about the pendency of the proceedings before this Court being Special Civil Application No. 12083 of 2000 and the order of admission and interim orders passed therein. I would have recorded the reasons further on the said aspect. However, Mr. Nanavati has not invited reasons and therefore, I find it proper to leave at that stage. Therefore, the net result would be that the order passed by the Industrial Court, which is impugned in this petition, cannot be sustained in eye of law.

9. So far as the liberty, which is sought for by the respondent is concerned, in any proceeding, which is

pending before this Court, if the trial is not stayed, it would always be open for either parties to raise the question regarding maintainability of the proceedings and the Court, conducting trial can consider such aspect as to the preliminary issue or maintainability or otherwise. Mr. Sinha, learned advocate for the petitioner, has also fairly submitted that if the appropriate proceedings under Section 80(C) of the BIR Act is moved, the petitioner would also not object to the said course adopted by the respondent.

10. So far as the question of increasing strength of the Meter Readers on account of retirement of the existing Meter Readers or on account of increase in number of customers are concerned, it would be open for the respondent to move the appropriate proceedings either before Labour Court or before this Court by way of appropriate application in the pending proceeding of Special Civil Application No. 12083 of 2000 or by separate independent proceeding as may be permissible in law. Mr. Sinha, learned advocate for the petitioner has submitted that such proceeding initiated by the respondent may not be maintainable. However, since I am not examining the said aspect at this stage, it will be open to both the parties to raise contentions available under the Law, if and when, the appropriate proceeding taken out by the respondent before appropriate forum.

11. Under the above circumstances, the order dated 5.4.2004 passed by the Industrial Court in Revision Application No. 7 of 2000 is quashed and set aside with further direction that setting aside of the order passed by the Industrial Court shall not prejudice the rights of the respondent to move appropriate proceeding by way of preliminary issue on the question of Section 80(C) of the BIR. Act and the appropriate application for appointment of additional Meter Readers on the ground of retirement of the existing Meter Readers and increase in the number of customers or otherwise. However, it is clarified that in the aforesaid appropriate proceeding, the contention of both the sides shall remain open.

12. Petition is accordingly allowed to the above extent. Rule is made absolute. Considering facts and circumstances, there shall be no order as to cost.

(Jayant Patel, J.)
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